

PROTECTING LAND **USING VIRGINIA'S** **CONSERVATION TAX CREDIT**

21 May 2002

Summary

The Commonwealth of Virginia grants the donors of conservation land and easements a credit against state income taxes of one-half the value they contribute. This tax credit can be sold for cash. The Virginia Conservation Credit Pool, LLC is working to bring buyers and sellers of conservation credits together around the state. Land Trusts can call on the Pool to help their conservation donors get cash payment for their land protection efforts.

Virginia's Conservation Tax Credit

The Commonwealth of Virginia encourages landowners to donate their lands, or restrictive easements over the lands, to conserve open space and wildlife habitat. The Commonwealth does this in several ways. One of the most powerful is the credit Virginia grants to reduce state income tax.

Under the Virginia Land Conservation Incentives Act of 1999 [Code of Virginia §58.1-510-513] every landowner who donates land or an easement for conservation is entitled to a credit against state income tax of 50% of the value of the donation. A tax credit is subtracted from the amount of income tax the taxpayer owes for the year, so it is the same as a cash payment of that amount to the conservation donor. Unused credits may be carried forward into five more tax years after the year of the original donation.

Selling the Tax Credit

Often the donor of an easement that reduces the value of her/his land does not pay enough Virginia state income tax to get the full benefit of the tax credit. For a land-rich but low-income farm family, the tax credit is not really very helpful.

To make the tax credit program more helpful for low-income landowners and to encourage more conservation donations, in April 2002 the Commonwealth enacted a new law that allows the direct sale of credits from one taxpayer to another. The 1999 law allowed for sharing of credits, but only through complex legal maneuvers. The 2002 law makes it much easier for easement donors who cannot use the full benefit of the tax credit to sell their unused credits for cash.

Virginia Conservation Credit Pool, LLC

Virginia conservationists have formed an organization, the Virginia Conservation Credit Pool, LLC ("the Pool"), to develop the legal tools and to carry out the transfer of credits from conservation donors to high-income taxpayers who can use the state income tax credits and who want to help conserve land.

Land trusts and conservation agencies who are working with landowners can call on the Pool to convert their donors' tax credits into cash income. Often, this can help make it possible for a conservation-oriented owner of modest means to make an important donation to protect land. Credits may be transferred without using the Pool, and no one is obligated to call on the Pool to transfer credits. The Pool offers a depth of experience with the complex issues of tax credits and conservation easements, combined with public disclosure and auditing, that is unmatched elsewhere.

A Case Study:

Farmer Jones wants to see his family's land stay in farming in perpetuity. He negotiates the terms of a conservation easement with the Hayfields Trust. The easement and the Hayfields Trust all meet the standard Internal Revenue Service criteria for a deductible charitable donation, and the Trust is a qualified donee under Virginia law.

The Jones Farm is 1000 acres. A qualified appraisal shows that the Fair Market Value ("FMV") of the land under current County regulations is \$5,000 per acre. Under the restrictions of the easement, the FMV will be \$1,000 per acre. By placing the easement on the land, Farmer Jones is forfeiting \$4,000,000 that his family could get by selling out. He can still live on the land and farm it, if the easement permits that.

The Virginia Credit on the Jones Farm:

When Farmer Jones donates the easement on his farmstead, he is making a charitable gift of "an interest in land" of \$4,000,000. He is entitled to a credit against Virginia income taxes of 50%, or \$2,000,000. But, Farmer Jones only actually owes \$3,000 in Virginia income tax in a good year when the crops are high, so this isn't very helpful.

Farmer Jones and the Farmland Trust call the Virginia Conservation Credit Pool, LLC, and offer the \$2,000,000 in value of Virginia income tax credits for sale. VCCP offers to find buyers for the credits if Farmer Jones will accept \$0.75 in cash per dollar of credit. (The other \$0.25 per dollar will be used as to provide an incentive for buyers of credits, and to cover expenses.) Farmer Jones agrees. When the buyers are identified, the Pool plans the legal transfer of the credits. Once Farmer Jones donates his easement, the credits are actually transferred and Farmer Jones receives his cash payment.

"Donees": Land Trusts, Public Agencies, and The Pool

The land trusts and public agencies that receive conservation donations must be the central players in negotiating gifts and easement terms, and in enforcing the terms of easements after they are donated. The Pool will work to find tax credit buyers, but the primary responsibility for arranging the underlying conservation donation and ensuring that it is a good expenditure of public tax benefits lies with the donee.

For More Information...

about using Virginia conservation tax credits, please call the Virginia Conservation Credit Pool, LLC, c/o Phil Hocker, Alexandria, VA. 703.683.4990 / phil@hockers.com